R E M A R K S

A. INTRODUCTION

Claims 47-66 are pending and have not yet been examined.

Upon entry of this Preliminary Amendment:

- Claims 47-66 will be pending

- Claims 47, 48, and 64 will be amended

- Claims 47, 48, and 64 will be the only independent claims

B. CLAIM AMENDMENTS

Claims 47, 48, and 64 have been amended to make minor and obvious stylistic and typographical corrections. No new matter has been added.

Claim 47 has been amended to clarify that the first storage device stores instructions configured to direct the first processor to determine a first set of numbers of a player and a second set of numbers of the player <u>and</u> to transmit information.

Similarly, Claim 48 has been amended to clarify that the first storage device stores instructions configured to direct the first processor to receive an identifier <u>and</u> determine a total payout for the ticket.

Claim 64 has been amended to correct an obvious typographical error, and now correctly recites *in which each of the first set and the second set is eligible individually to qualify <u>for</u> a respective primary payout*.

C. THE MEYER 10/612307 AMENDMENT OF JULY 16, 2007

1. IDS

This paper is filed concurrently with an Information Disclosure Statement that cites and provides a copy of "Amendment" mailed July 16, 2007 (referred to herein as the "July 2007 Meyer Amendment"), in U.S. Patent Application No. 10/612307 of Meyer et al., entitled "Lottery Game Method" (referred to herein as the "Meyer application").

The July 2007 Meyer Amendment is published through the PTO's Public PAIR portal (http://portal.uspto.gov/external/portal/pair), specifically in the Image File Wrapper for U.S. Patent Application No. 10/612307. The exact date of publication of the July 2007 Meyer Amendment is not known, but the Image File Wrapper indicates the July 2007 Meyer Amendment was received by the PTO on July 16, 2007. The copy provided in the IDS was downloaded and printed on July 17, 2007.

The July 2007 Meyer Amendment responds to Section 103(a) rejections that are based on U.S. Patent No. 6497408 to Walker et al. (the "Walker '408 patent").

The present application is a continuation of U.S. Patent Application No. 10/272,125 (now U.S. Patent No. 7052394), which is a continuation of the application that issued as the Walker '408 patent. Accordingly, any publicly-available statements made in the July 2007 Meyer Amendment as to how one having ordinary skill in the art would interpret the disclosure of the Walker '408 patent (and, accordingly, the Specification of the present Application) may be considered relevant to examination of the present application.

2. Mischaracterization of U.S. Patent No. 6497408 to Walker et al.

The July 2007 Meyer Amendment makes the following statements with respect to the Walker '408 patent:

> Walker '408 teaches a system and method for conducting and playing a supplemental lottery game that allows the player to win an award if the player **fails to win** in the lottery game or if the player **fails to reach a certain threshold of winning** in the lottery game. As Applicants understand Walker '408, it provides a backup method for receiving a value payout that arises when all of the sets played are losers or below a threshold of winning. In that situation, the player may receive another value payout from the completely separate meta-game, and the value payout is less than the value payout for a winning set. Although Walker '408 discloses multiple sets of plays that define a group, Walker '408 fails to disclose or teach a value payout for **winning** a plurality of sets on a single play as recited in each independent claim. In addition, Walker '408 fails to disclose or teach a value payout that is different than the sum of a plurality of individual value payouts for winning each set individually as further recited in each independent claim. For each of these reasons, Applicants respectfully assert that Walker '408 fails to correct the deficiencies of Powerball.

[page 14 (emphasis in original)];

> In this hypothetical, the combination of Powerball and Walker '408 still does not disclose or teach a value payout for winning **both** sets on a single play as recited in each independent claim.

[page 14 (emphasis in original)]; and

> Therefore, the combination of Powerball and Walker '408 still does not disclose or teach a value payout that is **different** than the sum of a plurality of individual value payouts for winning each set individually as further recited in each independent claim.

[pages 14-15 (emphasis in original)].

The specific language referenced in the above quotes as "recited in each independent claim" appears to be the following:

> determining a value payout based on respective numbers of winning symbols in respective sets of player symbols,
>
> > wherein for at least some value payouts
> >
> > > the value payout for winning a plurality of sets on the single play
> > >
> > > is different than a sum of a plurality of individual value payouts for winning each set individually,
> > >
> > > each individual payout based on the respective number of winning symbols in the corresponding set of player symbols

[See, e.g., page 2 (claim 1)].

Thus, the July 2007 Meyer Amendment states that the Walker '408 patent (and, consequently, Applicants' present Specification) does not disclose the following:

(A)   a value payout for a meta-game that is greater than or equal to a value payout for a winning set; and

(B)   wherein for at least some value payouts, the value payout for winning a plurality of sets on a single play is different than the sum of a plurality of individual value payouts for winning each set individually.

Applicants dispute the characterizations (A) and (B).

With respect to (A), Applicants submit that, contrary to what is alleged in the July 2007 Meyer Amendment, the Walker '408 patent discloses a value payout for a meta-game that is greater than or equal to a value payout for a winning set. For example, table 132 (FIG. 3) represents one embodiment of a price/award database 130. In one depicted example, as explained in the description

> in order to qualify for a payout from the meta-game, the total primary lottery drawing payout for a player's group of twenty primary lottery drawing entries must be less than $5.00.

[Column 9, lines 32-36]. As depicted in table 132, the available award(s) 140 for the situation described above include "$7.27 or 140 credit points." One winning set of a group of twenty associated sets could have a value payout of $2.50 and another winning set of the group could have a value payout of $2.00, for example, and the combined total of the individual value payouts would be less than $5.00. According to the example information in table 132, the award in such a

circumstance could be $7.27. Thus, the <u>Walker '408 patent</u> clearly discloses, contrary to what is alleged in the July 2007 Meyer Amendment, that in some embodiments a value payout for a meta-game (e.g., $7.27) could be greater than a value payout for a winning set (e.g., $2.50).

With respect to (B), Applicants submit that, contrary to what is alleged in the July 2007 Meyer Amendment, the <u>Walker '408</u> patent discloses wherein for some value payouts, the value payout is for winning a plurality of sets on a single play, and further, as discussed below, wherein for some value payouts the value payout is different (e.g., greater) than the sum of a plurality of individual value payouts for winning each set individually.

Applicants note that even a cursory review would establish that the <u>Walker '408</u> patent discloses determining a value payout for winning a plurality of entries on a single play, such as where more than one set of player numbers on a particular lottery ticket match some or all of the winning numbers for an associated lottery drawing. For example, the Background section describes an illustrative example in which if a player purchases five "quick-pick" sets of numbers, or entries, for a 6/49 Lotto drawing, a lottery terminal could randomly select five sets of six numbers and then print a single ticket listing the five sets of numbers. [Column 1, lines 38-65]. A player may purchase, during a single transaction session, a plurality of lottery drawing entries that are registered as a group. [Column 15, lines 2-5]. A plurality of entries (e.g., on a ticket) may be determined to be winners in the same drawing, and a corresponding value payout may be provided for winning the plurality of sets (e.g., the value payout may be the sum of the payouts for the respective awards for the individual winning sets). For example, a value payout for winning a plurality of sets on a single play in a specific lottery drawing could comprise $3 + $3 + $3 = $9, where three sets win $3 apiece. [Column 12, lines 54-57].

Additionally, and contrary to what the July 2007 Meyer Amendment alleges, the <u>Walker '408</u> patent discloses that in some instances a determined value payout for winning a plurality of sets on a single play is <u>different than</u> the sum of a plurality of individual value payouts for winning each set individually. The <u>Walker '408</u> patent discloses such value payouts in at least three ways: (a) a value payout for a meta-game having a value that is different from a sum of respective individual prizes for winning sets of numbers; (b) a value payout including both a (non-zero) meta-game award and a (non-zero) total of respective individual prizes for winning sets of numbers, such a value payout being different obviously from a value payout for only the total of respective individual prizes; and (c) a value payout that is of a type different from a total cash prize for a plurality of individual winning sets of numbers.

First, a value payout for a meta-game is clearly described in the <u>Walker '408</u> patent as being potentially <u>different from exactly the sum</u> of a plurality of respective individual payouts for winning sets of player numbers. See, *e.g.*, Column 9, lines 39-43 ("For example...the player qualifies for a meta-game award even if entries of his group win a total of $29 in the primary lottery drawing"); FIG. 3 (indicating that $13.15 is a possible meta-game award). Accordingly, the <u>Walker '408</u> patent describes, in at least one example, a payout of $13.15 for a plurality of winning sets of numbers (which could be, as discussed above, on the same lottery ticket for the same lottery drawing). $13.15 is different from $29, which in the example is the sum of a plurality of respective individual cash payouts for the winning sets of player numbers. In another example, a player may qualify for a meta-game award of $7.27 where the total primary lottery drawing payout for a plurality of sets of numbers is less than $5. See, e.g., Column 9, lines 18-36; FIG. 3. $7.27 (a value payout) is different than $5 (a value payout that is a sum of individual value payouts). Accordingly, a value payout specifically for a meta-game is itself a type of value payout that could be different than the sum of a plurality of individual value payouts for winning each set individually.

Second, as in the example described just above, the <u>Walker '408</u> patent clearly discloses that a player may receive <u>both</u> a meta-game award <u>and</u> a total prize that is a sum of respective prizes won for each individual winning set of numbers. See also, *e.g.*, Column 9, lines 19-29 (allowing for "a player to win a meta-game award even if one or more primary lottery drawing entries of the player's group qualifies for an award in the primary lottery drawing. In this embodiment, a player could qualify for a meta-game award so long as the <u>total prize won by the primary lottery drawing entries of the group</u> in the primary lottery does not exceed a certain threshold.") (emphasis added). Accordingly, the <u>Walker '408</u> patent describes, with respect to some embodiments, paying out, for a plurality of winning sets of numbers, <u>both</u> a meta-game award (*e.g.*, $13.15) <u>and</u> a "total prize" (*e.g.*, $29) that is a sum of respective awards for individual sets of numbers. This clearly discloses that at least some determinations of what should be paid out to a player (*e.g.*, $13.15 (meta-game award) + $29 (sum of individual awards) = $42.15) is different from exactly the sum of the individual payouts (*e.g.*, $29). Further, the <u>Walker '408</u> patent clearly describes that a value payout may be <u>greater than the sum</u> of a plurality of individual value payouts for winning sets. In the example discussed just above, the <u>Walker '408</u> patent describes, with respect to some embodiments, that at least some determinations of what should be paid out to a player (*e.g.*, $13.15 (meta-game award) + $29 (total of individual awards) = $42.15) is <u>greater than a sum</u> of individual payouts (*e.g.*, $29). Accordingly, a value payout that includes awards for a meta-game and prizes associated with a

plurality of winning sets is another type of value payout that could be different than the sum of a plurality of individual value payouts for winning each set individually (and could be greater than such a sum).

Third, a meta-game award for a plurality of sets of numbers may be of a different type of award than the prizes for individual winning sets of numbers. For example, the Walker '408 patent contemplates that prizes for individual entries may be cash prizes but a meta-game award may include non-cash prizes such as merchandise, services, and/or credit points toward merchandise or services. See, e.g., Column 9, lines 39-43 ("For example...the player qualifies for a meta-game award even if entries of his group win a total of $29 in the primary lottery drawing"); FIG. 3 (indicating that 260 credit points is a possible meta-game award). Accordingly, the Walker '408 patent discloses a payout (e.g., credit points) for a plurality of sets of numbers that is different from exactly the sum of a plurality of respective individual cash payouts for winning sets of player numbers (e.g., a cash prize). Accordingly, a value payout that includes an award for a meta-game that is of a different type than a value payout for a plurality of winning sets is yet another type of value payout that could be different than the sum of a plurality of individual value payouts for winning each set individually.

Finally, Applicants note that although, as stated in July 2007 Meyer Amendment, in some embodiments a meta-game award may be provided only if an award earned in a lottery drawing is below a threshold, such a threshold may be set at any prize or monetary level that is desirable:

> The threshold at which a player qualifies for a meta-game award may be set at any prize or monetary level by the meta-game sponsor or authority. For example, the meta-game sponsor may simply set the threshold at the top jackpot level.... The criteria for receiving an award in the meta-game may vary and may be modified as needed or desired by the meta-game sponsor or authority.

[Column 12, line 65 to Column 13, line 7].

Applicants' remarks are limited to disputing some published statements made in the July 2007 Meyer Amendment about the scope of the disclosure of the present application (by way of reference to its grandparent application, now the Walker '408 patent). Applicants have not construed any of the specific claims or claim language of the Meyer application in light of its specification, nor have they addressed, much less provided an opinion regarding, the patentability of any claim of the Meyer application or the propriety of any pending rejection in the Meyer application.